Ontario

SELECT COMMITTEE
ON
PLANT SHUTDOWNS
AND
EMPLOYEE ADJUSTMENT

INTERIM REPORT

Tabled in the Legislative Assembly
by
Bruce McCaffrey, M.P.P., Chairman
Fourth Session, Thirty First Parliament
29 Elizabeth II

The Honourable John E. Stokes, M.P.P.
Speaker of the Legislative Assembly

Sir:

Your Select Committee on Plant Shutdowns and Employee Adjustment has the honour to present an interim report, and commends it to the House.

Bruce McCaffrey

December 12, 1980

Bruce McCaffrey, M.P.P.
Chairman

THE SELECT COMMITTEE ON PLANT SHUTDOWNS AND EMPLOYEE ADJUSTMENT

Bruce McCaffrey, M.P.P., Chairman

Hugh O'Neil, M.P.P., Vice-Chairman

Sam Cureatz, M.P.P.

Bob Mackenzie, M.P.P.

Remo Mancini, M.P.P.

Elie Martel, M.P.P.*

Russ Ramsay, M.P.P.

Jim Renwick, M.P.P.

George Taylor, M.P.P.

John Turner, M.P.P.

Ron Van Horne, M.P.P.

John Williams, M.P.P.

Graham White, Clerk

Rick Jennings, Research Officer

John Eichmanis, Research Officer

*On November 13, 1980, Mr. Martel replaced Mr. Cooke

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INTRODUCTION

This Committee was established on October 28, 1980, by Resolution of the House -

> Resolved, That the matter of plant closings, and related issues, be referred to a Select Committee on Plant Shutdowns and Employee Adjustment for its consideration and report as soon as possible; And that the Committee have the powers to call for persons, papers and things and to examine witnesses under oath, and the Assembly doth command and compel attendance before the said Committee of such persons and the production of such papers and things as the Committee may deem necessary for any of its proceedings and deliberations, for which the honourable the Speaker may issue his Warrant; And that the Committee have power to print such papers and evidence from day to day as may be ordered by the Committee; And that substitution be permitted provided that written notice is given to the Chairman of the Committee before or early in the meeting; And that the Committee be empowered to employ such assistance as it deems advisable, subject to budgetary approval by the Board of Internal Economy; And that the Committee be composed of 12 members as follows: McCaffrey (Chairman), Cooke, Cureatz, Mackenzie, Mancini, O'Neil, Ramsay, Renwick, Taylor (Simcoe Centre), Turner, Van Horne, Williams.

The Committee represents the Assembly's response to two urgent problems.

First, plants are being shut down in every part of the province, throwing thousands of Ontarians out of work and doing serious damage to Ontario's industrial capacity, the mainspring of the provincial economy.

Secondly, many of those whose jobs are lost in plant closings find themselves, after years of faithful service, with little or no severance pay, with extremely meagre pensions and with few prospects of finding alternate employment. These human costs of shutting down a plant are simply immeasurable.

The issues of plant shutdowns and of the inadequate pensions and severance payments received by workers in these plants have been matters of serious concern in the Legislature for many moths. An emergency debate was held on the matter on October 6, and on October 14, the Minister of Labour made a statement to the House outlining policy responses to the problems of plant shutdowns, including amendments to <u>The Pension Benefits Act</u> and <u>The Employment Standards Act</u>.

The Work of the Committee: The First Two Phases

In recognition of the urgency of the matters before it, the Committee resolved to complete the first two phases of its work before prorogation and to report to the House the results of this work.

The first phase of the Committee's work involved meetings with the Ministers and the key officials of those Ministries most directly concerned with plant shutdowns and with employee adjustment. These sessions were devoted to establishing sources of information, to discussing government policy and to clarifying the details of pertinent legislation. To these ends, the committee met with the Minister of Labour, the Minister of Industry and Tourism, the Treasurer and the Minister of Consumer and Commercial Relations (who has responsibility for pension policy and legislation).

With these briefings as background, the Committee moved to study several recent instances of plants which have shut down entirely or which have experienced substantial layoffs. This case study approach was designed to give Members of the Committee a first hand appreciation of the reasons why plants are being shut down and how individual workers are being affected by shutdowns.

The case studies constitute a fairly broad spectrum of the range of plants which have been closed or have cut back on total workforce. The plants selected for review were:

Armstrong Cork Industries Limited	Lindsay
SKF Canada Limited	Scarborough
Steep Rock Iron Mines Limited	Atikokan
Heintzman Limited	Hanover
Essex International of Canada Limited	Dunnville
Bendix Automotive of Canada Limited	Windsor
Outboard Marine Corporation of Canada Limited	Peterborough

Further details on each shutdown are set out later in this report. The Committee should like to record the co-operation received from the management of these firms, the unions representing the workers in the affected plants and the spokesmen for the local municipalities. The notice they received of the Committee's intention to look into their situations was necessarily very short, and many went to some inconvenience to appear before the Committee.

In two instances the Committee decided it was necessary to request that Mr. Speaker issue his Warrants for documents containing financial information on particular firms.

The balance of this report summarizes the information which emerged from the Ministry briefings and the case studies, and highlights the issues the Committee believes are at the heart of the matter and which will be studied more intensively in the next few months.

Finally, the Committee has not completed its consideration of the severance pay issue. The Committee, however, perceived an urgent need to provide at least temporary protection to workers laid off before this Committee reported and before more comprehensive legislation is enacted. The Committee therefore recommended to the House that Bill 191, An Act to Amend the Employment Standards Act, 1974, now before the Assembly, be immediately amended to require a minimum severance pay of one week's wages for each year of employment for all layoffs of 50 or more workers.

CHAPTER I: CASE STUDIES

Introduction

As the Committee's terms of reference indicate, plant shutdowns involve a number of related issues. The economic and financial considerations need to be clearly understood - is the company going out of busines or merely 'rationalizing' its operations?

The decision making process itself also must be examined. In other words, who made the decision to shut down and why? Finally, the impact of the layoff or shutdown on the workers must be reviewed, particularly the benefits to which they are entitled by law and the actual benefits they do receive.

The Committee felt it should address these questions in order to fully understand plant shutdowns. Thus, the Committee adopted a case study approach in which individual plant closures form the basis for study. The Committee has used this approach to discern patterns or features common to shutdowns which would lead to general recommendations.

In each instance, the Committee invited senior management, officers of the union involved, individual workers and representatives of the local municipality to come before the Committee to set forth their views on the reasons for the shutdown and on its after-effects, and to answer questions from Committee Members.

The case studies which follow were chosen so as to present the Committee with a variety of circumstances. Thus in selecting them, an effort was made to include plants or companies that are controlled in Canada and in foreign countries, that are small and relatively large, that are involved in different types of enterprises, that are located in communities of various size and that, in some measure, reflect the geographic regions of the province.

ARMSTRONG CORK INDUSTRIES LTD.

Reason For Shutdown: The Canadian operation was closed because the U.S. parent had alternative investments with higher expected returns.

The Shutdown

Armstrong Cork began carpet operations in Canada in 1966. Over the next ten years, annual losses in the carpet division ranged between $100,000 and $200,000. In 1976 the unprofitable Peterborough carpet plant was closed. In 1978 and 1979, after tax returns on investment were 1.7 and 3.6 percent. With only 4 per cent of the market and facing tight profit margins, low market growth, rising material costs, outdated machinery and high interest rates, the company could not economically justify the $20 million investment necessary to keep the Lindsay plant competitive. The company was seeking a 10 per cent after tax return and this was seen as very unlikely. In early 1978 the head office decided to try to sell the plant. No buyers were found. Closing was discussed first in March 1980 and decided on in June. On July 3 workers and government were first notified that the plant would close November 14, 1980.

The U.S. parent made $66 million in 1979 while the Canadian operation, including the very profitable floor and tile operation in Montreal, had profits of $3.7 million. The company has no plans to supply the Canadian carpet market from the U.S. because the poor exchange rate and the 20 per cent tariff are effective economic barriers. The Canadian operation was closed ultimately because the U.S. parent had alternative investments with higher expected returns.

Employee Adjustments

Termination benefits were in excess of legal requirements. Severance pay was calculated on the basis of one week's pay per year of service. Pension benefits for those eligible for early retirement were paid as if the employees had continued to contribute to the plan until age 65. Nonetheless pension benefits were low: a woman with 12 years' experience received $81/month, her husband with 24½ years' experience received $181/month.

A manpower adjustment committee was established. Of 54 salaried employees, 38 requested assistance and 17 were placed. Of the 217 hourly employees, 119 requested help and 29 were placed. Of the 300 workers laid off, an estimated 50 took early retirement; 100 found other jobs and 150 were receiving unemployment benefits. The average hourly wage at the time of closing was $6.60.

SKF CANADA LTD.

Reason For Shutdown: While the Canadian company was unable to export because of the formidable trade barriers in other countries, the Canadian market is effectively unprotected.

The Shutdown

SKF Canada Ltd. opened a ball and roller bearing manufacturing plant in Scarborough in 1950. Originally the company produced a large volume of small diameter bearings. Over the years stiff competition was experienced from cheaper imports from Japan, Portugal, Czechoslovakia and Poland. The plant then shifted to manufacturing less profitable larger bearings with shorter production runs.

While the Canadian plant was unable to export because of the formidable trade barriers in other countries, the Canadian market is effectively unprotected. Although the tariff rate is 15 percent, two-thirds of all bearings are exempt. Exemptions include bearings used in agricultural products and those imported under the Autopact. The Canadian trade deficit in bearings in 1979 was $172 million.

SKF Canada suffered losses six of the last ten years including two large yearly losses, although 1979 was profitable. With the loss of the snowmobile business and the shutdowns at White Motor Corporation and Massey-Ferguson (SKF's largest customers) and the prospect of a drop in the tariff from 15 percent to 9.2 percent, the Company felt that it would be unable to compete. On October 15, 1980, the company announced the shutdown of its manufacturing section in Scarborough by December 1981. This will result in the loss of 330 jobs.

SKF's worldwide profit in 1979 was $30 million. Its sales in Canada were $66 million in 1980, up 33 percent from 1978. Of this, $27 million worth of products were manufactured in Canada. Investment in Canada was $100,000 in 1979. The total Canadian sales of bearings were between $250 and $500 million of which imports, particularly Japanese ones, were taking an increasing share. The SKF Group's target objective is a real return of 2-3 percent, although the company would accept a return that equalled the cost of financing. Attempts to make the

Canadian operation profitable by global product mandating failed primarily because the base was a small unprotected market: tariff and non-tariff trade barriers in other countries effectively precluded the entry of Canadian products.

Employee Adjustments

Termination benefits to workers, including severance pay, were to be negotiated as part of the final year's contract. Notice was given fourteen months in advance which exceeded the legal requirement. At the time of closing the average hourly wage was approximately $8.

HEINTZMAN LTD.

Reason For Shutdown: Went into receivership.

The Shutdown

Heintzman Piano Ltd. was a Toronto-based family firm founded in the 19th century. The company consistently lost money between 1929 and 1958. From 1959 to 1968 the company made a profit and had annual sales of up to 3000 units. The profit situation deteriorated after 1968; in 1978 the Royal Bank terminated its longstanding relationship with Heintzman's. That same year the company amalgamated with Sherlock Manning Piano Company of Clinton, Ontario which was owned by a member of the Heintzman family who had left the family business in 1964. The rescue attempt failed: Heintzman was put into receivership and the employees were terminated in July, 1980. The company had assets of $700,000, liabilities of $1.3 million and annual interest payments of $250,000. Heintzman's sales had fallen to 1800 by 1979. Its upright pianos retailed for $3000 to $4000 and its Grands for $12,500. Inefficiency due to low productivity and poor management as well as higher component costs might have been addressed by the new company, but receivership intervened. The company's name, however, remains a valuable asset. A staff of ten continues to produce a limited number of Grand Pianos.

Employee Adjustments

Termination benefits did not go beyond the legal requirements. At the time of closing the average hourly wage was $6.30. Of the 130 employees terminated since January 1980, 15 have left the area, 12 have full time work, 8-10 have part-time work and one receives a pension.

STEEP ROCK IRON MINES LTD.

Reason For Shutdown: The operation was closed because economically mineable reserves had been exhausted, according to the company. Investment in a nearby mine was rejected because long term contracts were unavailable.

The Shutdown

Steep Rock is owned by Canadian Pacific Enterprises. In January, 1978 the company announced that the mine near Atikokan would close January, 1979 with pelletizing operations continuing until August, 1979.

At the close of 1979, the company had $55 million in cash and two other mine prospects. Bending Lake, forty miles by air from Atikokan requires $225 million to develop. The site has reserves of 50 million tons and a potential annual capacity of 2.5 million tons. The Lake St. Joseph location has reserves of 200 million tons with an expected annual capacity of 8 million tons. The estimated development cost was $453 million in 1974 dollars. Such development requires contracts of 15-20 years. The over-capacity in iron ore created when growth of the steel industry failed to meet expectations means there is little likelihood of finding long term buyers until 1985. The three year lead time required for development suggests that development work will not begin before 1982. The company requires a 10-15 percent return on a new project although it would maintain an existing operation as long as it broke even.

The larger steel producers, Dofasco, Algoma and Stelco, have invested in Minnesota and Michigan iron ore companies. As a result, they have 20-30 year ore contracts that reflect the extent of their ownership. Over 80 percent of Steep Rock's iron ore production went to Algoma Steel before the mine was shut down.

Employee Adjustment

In June 1978 the company notified the government that it intended to close the mine. Two months later a manpower adjustment committee was formed and an inventory of employee skills was forwarded to 90 prospective employers. A training programme was undertaken to teach welding to thirty-five employees

and carpentry to twenty-five. Pension benefits were increased through negotiations from \$8 to \$10 per month for each year of service. Negotiated severance allowances were based on one week per year of service for each of the first ten years and one-half week for each of the next five years. The maximum severance allowance was 12½ weeks' pay for 15 years of service.

Of the 600 employees in January 1978, 100 left through normal attrition that year. Of the 480 employees terminated in January 1979, 69 took early or normal retirement, 167 found local employment, 112 moved West to work in the coal mines, 37 took other jobs in the East, 32 are still taking training and 63 are likely unemployed.

Some examples of the pension benefits and severance pay qualified for by employees: a 43 year old employee with 8 years of service received \$2,600 severance pay and \$78 a month pension at age 65; a 55 year old employee with 21 years service qualified for pension benefits of over \$200 a month at age 65 or \$60 a month if taken at age 55; a 44 year old employee with 16 years of service received \$6,400 in severance pay and qualified for a \$152 a month pension at age 65 or an early retirement pension of \$80 a month at age 55; and a 55 year old employee with 14 years service received \$5,600 in severance pay and a \$140 a month pension at age 65 or an early pension of \$46 a month at age 55.

OUTBOARD MARINE CORPORATION OF CANADA LIMITED

Reason For Shutdown: The rationalization of production led to the shift of jobs from Peterborough to the United States.

The Shutdown

The Canadian division of Outboard Marine (Headquarters in Delaware) was established in Peterborough in 1928. In 1973-74 there were 2300 employees. The company is the only domestic manufacturer of outboard motors and lawnmowers, its major products. Outboard Marine has 50 percent of the Canadian outboard motor market. In the 1950s and 1960s chainsaws and snowmobiles were added to production.

Snowmobile production ended in March, 1975 and as a consequence 350 employees were terminated. In June 1977 the company announced the end of chainsaw production and the termination of a further 300 employees. With a $2.5 million loan from the Ontario government and a $6 million equity investment from the federal government, the employees and a Montreal businessman bought control of Pioneer Chainsaw. The company operated profitably and in 1979 majority ownership was acquired by Electrolux A.B. of Sweden.

In the meantime Outboard Marine faced declining world wide sales and falling capacity utilization in the United States. The company decided to rationalize production. In February 1980 Outboard Marine announced the consolidation of all North American parts manufacturing in Illinois and Wisconsin. Between 250 and 350 jobs were to be phased out in Peterborough. An assembly operation for the Canadian and South American markets would remain. The plant retained the capacity for tooling and machining parts. The company intends to use this capability by bidding for outside contracts to produce parts. Its potential for success is uncertain. In April 1980, Outboard Marine announced that assembly for the South American market would be shifted from Peterborough to the United States. This assembly accounted for almost half of the plant's work and resulted in the loss of 250 jobs. The possible removal of the tariff on outboard motors and lawnmowers suggests that further job losses are likely. While employment in Canada was reduced by 25 percent, there was a 30 percent reduction in the United States.

Employee Adjustments

Termination benefits did not go beyond the legal requirements. Although a manpower adjustment committee was established when the Pioneer Chainsaw operation closed, none was established during the latest shutdown. The company has promised the government that it will ensure funding to guarantee all vested pension benefits. In recent negotiations the company agreed to increase funding by several million dollars to improve pensions particularly for employees entitled to early retirement.

Pension plan provisons for Canadian employees differ from those for American employees. In the U.S. employees acquire vesting after ten years, while in Canada the employee's vesting increases an additional 10 percent per annum until full vesting is acquired after ten years. In the U.S. there is an attachment of the company's assets to cover the unfunded liabilities in the pension fund whenever a company shuts down. Similar provisions do not exist in Ontario.

BENDIX AUTOMOTIVE OF CANADA LTD.

Reason For Shutdown: The Windsor plant was closed because the company had a large excess capacity in the products manufactured there.

The Shutdown

The rapid changes in the auto industry in recent years led to a reduction in markets in which Bendix had been dominant and greater import competition. Prior to 1965 all the production of Bendix Automotive of Canada, begun in 1929, had been for Canada and some Commonwealth countries. Following the Autopact, exports to the U.S. began to increase until they represented 98 per cent of production. The plant contained up to date, modern equipment and was in good condition. It had always been profitable with annual profits from 1976-79 ranging from $1.3 million to $3.3 million on an investment in plant and equipment of approximately $6 million.

In fiscal year 1980 the company began losing money. Based on the company's 6 year plan Bendix had an excess capacity in vacuum boosters and disc brakes nearly equal to the production at the Windsor plant. On May 28, 1980 the mangement in Canada was notified by head office in Michigan that it would have to justify keeping the Windsor plant open. On June 16 following the report from the management in Canada the decision was made to close the Windsor operations. On June 20, the employees were told and the plant was shut down.

Employee Adjustments

The employees received 12 weeks pay in lieu of notice as the plant was shut down the day of the announcement. Workers occupied the plant on June 23; the next day they agreed to leave. Pension plan benefits amounted to $11/month per year of service payable at age 65 and a bridging supplement equivalent to this before 65. All retired employees received the full benefits to which they are entitled. All those eligible for retirement based on age 60 and 10 years of service, age and service totalling 85 or 30 years of service received their full entitlement. Eleven employees within a few months of being eligible for retirement were given special consideration allowing them to retire with full benefits. All vested employees will receive full vested benefits at 65; others

received a cash settlement. Of 765 employees eligible for consideration, 173 received immediate pensions and 276 will receive vested pensions at 65 averaging $161 a month. No severance pay was made to union employees.

Non-union employees received severance pay of up to 6 months for 30 years service and were allowed leaves of absence of up to 12 months in order to qualify for vesting or early retirement.

A manpower adjustment committee was not set up. Instead, Bendix hired consultants who set up a one day workshop for employees on how to find employment.

ESSEX INTERNATIONAL OF CANADA LIMITED

Reason For Shutdown: The large drop in the sales of wire harnesses led the head office in Michigan to reduce overcapacity by closing the Dunnville Plant and consolidating production in the St. Thomas, Ontario plant.

The Shutdown

The Essex plant in Dunnville opened in 1961 to manufacture wire harness for automobiles. In 1977 a five month strike resulted in an 80¢ an hour raise spread over three years. Subsequently, Essex was taken over by United Technologies. Relations improved with a new agreement resulting in average wages of $4.09 an hour. The Dunnville plant was one of the most productive harness plants in North America.

On June 6, 1980 the workers were informed that there would be a layoff of 4 - 5 weeks in August to change over production for the new model year. Notice of 8 weeks required by the Employee Standards Act would be given to protect the company if the layoff was longer than expected. On July 14 it was announced that the plant would close on August 1. The effective date of the notice was June 6. In 1979 and 1980 in addition to the Dunnville closing, 11 of the Company's 21 wire harness plants in the U.S. were closed.

Employee Adjustments

While technically 8 weeks of notice was given, the workers only received 2½ weeks notice from the day the plant closed. There was no pension plan and no severance pay. The company paid an additional month's OHIP for employees who stayed until the termination date. No manpower adjustment committee was established.

CHAPTER II: EMPLOYEE ADJUSTMENT

Introduction

The layoff of employees results in many individual and community costs. Several programs and provisions are available in legislation and collective agreements to aid the terminated employees. Besides unemployment insurance, which is solely a federal government responsibility, there are several adjustments which are under provincial or shared jurisdiction. Among these are termination notice provisions, distribution of benefits in pension plans, severance pay and manpower adjustment committees.

Severance Pay

Severance pay is pay awarded to a terminated employee in excess of that reqired under the notice of termination provisions in the Employment Standards Act. There is no legislated requirement for severance payment in Ontario but it is required in some negotiated collective bargaining agreements.

There were 893 collective agreements covering bargaining units of 200 or more employees, in industries other than construction, covering 758,818 employees on file with the Ministry of Labour as of December 1976. There were severance pay provision in 26 per cent of the plans (236) covering 48 per cent of employees. The industries where severance pay was commonly found were automobile, federal administration, rubber, paper and transportation.

Severance pay is generally paid when the worker has been laid off. The employee is ineligible if discharged for cause or if the employee voluntarily quits. In a third of the plans severance pay was not payable when termination resulted from a labour dispute. A minimum service requirement of one to five years must generally be met before the employee is eligible to receive severance pay.

The formula for determining severance pay is often fixed payments per unit of service. Examples include payment per year of service of one week's pay, 20 hours' pay, $100 or 1.5 per cent of gross earnings. In other formulas severance pay may vary indirectly with service or payments may vary depending on whether termination results from an extended layoff or a plant closing. Often a maximum level of severance pay is established.

Manpower Adjustment Committees

The Ministry of Labour participates in the employment adjustment program of the Canada Manpower Consultative Service. Emphasis is placed upon the responsibility of the employer for adjustment measures. Where an employer agrees, a committee is established between the employer and the employees with an independent chairman. The relevant government agencies advise the committee.

The termination related committees deal with manpower placement due to cutbacks, closures and relocations. The Ministry of Labour's financial contribution to the committee's costs varies between 15 and 25 per cent to a maximum of $1000. The Ministry's budgeted commitment for fiscal 1979-80 was $60,000. The Manpower Training Branch of the Ministry of Colleges and Universities is also involved in some cases.

In 1979-80 committees were set up in over half the plant closures. Of the 67 committees set up 30 had completed their work by November, 1980. The committees had lasted an average of 5.8 months. Of the 2755 employees terminated in these instances 1724 or almost 63% sought assistance from the committee. Of these 1041 were relocated directly by the committee. This is over 60 per cent of the employees who sought assistance from the committee or 38 per cent of the employees terminated. An estimated 135 employees, or 5 per cent, found work on their own while 87 or 3 per cent withdrew from the workplace.

The Employment Standards Act and Bill 191

Termination Notice Provisions

Where the employment of fifty or more employees is terminated over a period of four weeks or less, and this is 10 per cent or more of the employees of an establishment or results in the closing of part of the business, the employer must send notice in writing to each employee and to the Minister of Labour.

The length of the notice period required is:

for 50 - 200 employees	8 weeks
for 200 - 500 employees	12 weeks
for 500 to more employees	16 weeks

The Notice Period

During this period the employees must receive their regular non-overtime pay and any vacation pay entitlement. No changes may be made in the conditions of employment during this period.

If the employer terminates the employee service before the end of the notice period, a lump sum payment must be made equivalent to what the employee would have received over the rest of the notice period. This payment does not include payments owed to the employee under retirement pension, sickness or disability insurance, workman's compensation or bonus or severance pay.

The employer is only entitled to make deductions where they are required by law, expressly authorized by the person or in obeying a court order. Vacation is not included in the notice period unless the employee agrees.

During the notice period, the employer is required to cooperate with the Ministry of Labour in finding jobs for the workers. The employer may give a notice of termination that is conditional on a future event but the prescribed notice period must be followed.

During the notice period an employee may be dismissed for wilful misconduct, disobedience or neglect of duty. When the notice period expires and the worker continues to be employed for an additional period longer than the notice period, the employee is entitled to another notice period before being terminated.

Application of Termination Notice Provisions

These Termination of Employment Provisions do not apply to employees who:

a) have less than 3 months service; they are not counted in determining the number of employees laid off and the percentage of workers affected.
b) are employed for a definite term or task, which must be less than 12 months or less than 3 months if the task is completed.
c) have been suspended for disciplinary reasons.
d) can no longer perform their contract of employment unless this is due to enforcement of the Environmental Protection Act.

e) are employed in an activity specifically exempted by the regulations; construction activity is currently exempted.

f) are laid off after refusing reasonable alternate work or alternate work available through the seniority system.

g) are recalled by the employer but do not return after a reasonable time.

h) are laid off due to a labour dispute, either strike or lockout.

i) are casual employees, i.e. they have arrangements to accept or refuse temporary employment when it is available.

j) have reached retirement age.

k) are on a temporary layoff.

Temporary Layoff

A temporary layoff is defined to be a layoff of 13 weeks or less out of 20 consecutive weeks. A week is counted for these purposes when the employee receives less than half regular pay and was not unable or unavailable to work, under disciplinary suspension or not able to work due to a labour dispute. A longer lay-off is counted as a temporary lay-off where the employee continues to receive or is entitled to receive payments from the employer such as supplementary unemployment benefits or where the employee is recalled within a time fixed by the Director of Employment Standards.

When a temporarily laid off employee is terminated, the lay-off is considered to start from the first day of the temporary layoff and the employee is owed a lump sum payment equivalent to what would have been received during the notice period.

Bill 191: An Act to amend the Employment Standards Act, 1974

The Committee reviewed this legislation with representatives of the Ministry of Labour. Bill 191 attempts to eliminate some loopholes in the current Employment Standards Act. The amendments which were introduced to the Assembly on November 14, 1980, try to ensure that the letter of the law reflects the intent of the law.

The proposed amendments affect two areas:

- the Minister is given specific authority to compel employers to participate in and contribute to the funding of manpower adjustment committees

- contribution to benefit plans must continue throughout the notice period; if pay is given in lieu of notice, benefits due during the notice period must be included and the notice period must be counted as service for the purpose of benefits. Such contributions will be considered wages for purposes of the Act.

Objectives of Bill 191

The Act tries to ensure that workers have an opportunity to use the manpower placement service which the manpower adjustment committee provides. The original Act required employers to co-operate with the Ministry of Labour in any action or program designed to help terminated employees locate new positions (Section 40, Subsection 5). Bill 191 means that the Minister can compel an employer to help fund and participate in a manpower adjustment committee.

Additional sections of Bill 191 try to ensure that the intent of the required notice period is, in fact, adhered to by employers. The notice period provisions endeavour to ensure that employees affected by mass layoffs can continue working under the normal conditions of employment for a period that varies with the size of the layoff. The Act aims to guarantee that employees will receive all normal entitlements during the notice period. By ensuring that benefits must be paid during the notice period and by ensuring that equivalent benefits must be given when payment is made in lieu of notice, the letter of the Act may more accurately reflect its intent.

Pension Plan Terminations Arising From Plant Shutdowns

The Committee has not considered the pension issue in detail. The following information is summarized from material provided by the Pension Commission of Ontario. A more detailed examination of the pension issue will be conducted by the Committee in January. At this time the final report of the Royal Commission on Pensions should be available.

Areas of Concern

When a pension is terminated because of a plant shutdown the major immediate area of concern is whether or not the assets in the plan are sufficient to cover the liabilities, i.e., the benefit commitments. The fund may not be able to guarantee that all vested benefits will be paid out.

The other major area of concern is the effect that the plan termination will have on the future pension benefits of employees. Bcause of vesting requirements and lack of portability provisions, employees may lose considerably in terms of future pension benefits when a plan terminates.

Types of Plans

There are two basic ways in which pension plan benefits are calculated, defined benefit plans and money purchase plans.

In defined benefit plans the pension benefit is determined by a formula. In unit benefit plans a unit of pension equal to a percentage of an employee's earnings is credited for each year of participation in the plan. Examples of these plans include Career Average, Final Average and Final Earnings Plans. An example of a Career Average formula is one where benefits increase for each year of service by 2% of earnings for that year. An example of a Final Average plan is one where the annual benefit is equal to the number of years of service up to 35, multiplied by 2% of the average of the annual earnings over the last 5 years, resulting in a benefit equal to 70% of this final average.

In flat benefit plans the benefit is not determined by income but only by service. An example is where an employee is credited with $8 a month pension for every year of service.

In these plans the contributions made by the employee and employer for each worker are credited to that employee and the benefit paid out is equal to what the contributions and these earnings will provide at the time of retirement or the termination of the plan.

Plan Funding

Money purchase plans are always fully funded because the benefits only accrue in direct relation to what the accumulated contributions can purchase. Pension plans of most small employers are of this type. Due to the exceptionally high interest rates in recent years benefits from these plans have been higher than expected.

Career Average and Final Average Plans are usually fully insured arrangements, the benefits are purchased year by year from an insurance company. When a plant closes the employees get their full accrued pension entitlements either in the form of cash if they are not legally vested or in the form of a deferred annuity purchased from an insurance company if the employee is vested.

An estimated 1,400,000 employees in Ontario or 80% of the employees with pension plans have plans under these arrangements where there is little chance of a shortfall in accrued benefits in the case of a wind-up. Altogether an estimated 1,750,000 employees in Ontario - about 40% of the workforce - belong to pension plans. Most of the concern with respect to pension entitlements in the case of a plant closure involves the estimated 350,000 employees with flat benefit plans. This is the form of plan negotiated by the major unions, the Autoworkers, the Steelworkers, the Rubber Workers, etc.

Insufficient Assets on Termination

In flat benefit plans the plan's assets may be lower than the liabilities because a new benefit has been added that has not yet been fully funded or the actuarial assumptions upon which the funding is based may be in error. In the first instance an unfunded liability arising from the improvement of the plans benefits must be fully funded within 15 years. If the plant closed five years after this liability arose two-thirds of the benefit would not have been funded.

In arriving at the level at which a plan must be funded to ensure that earned pension benefits can be provided, an actuary must make several assumptions such as the return that the contributions will get, the number of years on average that benefits will have to paid out, and the number of employees whose contributions will vest.

When a plan is wound up because of a closure and there is a shortfall, the assets must be distributed to try to cover the liabilities. First priority is to ensure that those now receiving pensions will continue to receive them. Those people vested by law according to the 45 and 10 rule have the next priority to receive their accrued benefits. The remaining funds are distributed among the unvested employees in an attempt to return their contributions to them.

Examples Provided to the Committee by the Pension Commission of Ontario

The ways in which the effect of a plant closing on pension benefits varies with the type of plan is illustrated by the examples provided to the Select Committee by the Pension Commission of Ontario. The examples provided are for Pedlar Industries Inc., a career average plan; Eltra of Canada Limited for salaried employees, a final average plan; and Eltra of Canada Ltd. for hourly employees, Pilkington Glass Industries and Columbus McKinnon Limited, all flat benefit plans.

Pedlar Industries Inc. salaried employees had a career average plan. When the company went bankrupt, the plan was wound up. Because interest rates were much higher than had been anticipated, the assets were able to purchase more benefits than had accrued to the employees. In the settlement each member was given a fully vested pension regardless of age of service. The benefits were purchased from a life insurance company. After all liabilities had been met a surplus of $1,035,418 remained which was returned to the company.

The salaried employees at Eltra of Canada Limited (Prestolite) in Sarnia had a pension plan with benefits based on the employee's highest consecutive five years' pay and integrated with CPP and OAS. On wind-up of the plan, benefits were based on the five years ending December 31, 1978.

An unfunded liability existed under the Plan. In the settlement, therefore, employees who were not age 40 with 10 years of service did not receive benefits. This included 34 out of the 90 employees in the plant.

All retired employees and those age 55 or over on December 31, 1978 were granted the benefits promised under the plan. All employees aged 40 with 10 years service received a full acrrued benefit. They can receive a full pension at age 62 or at 55 can receive a pension reduced by ½% for each month under 62 (6% per year).

The hourly workers at Eltra of Canada Limited (Prestolite) in Sarnia had a flat benefit plan. The plan was in an unfunded position. Upon wind-up those employees not vested (age 45 and 10 years service) received no benefits. This affected 60 out of 400 employees. All employees who had retired or were eligible for retirement received a pension equal to 96.4% of that payable under

the plan. Those eligible to retire by virtue of having 30 years service but who were not yet 56 received a pension reduced by ½% for each month under age 56. All employees qalifying under the 45 and 10 rule received a deferred pension to begin at age 65 equal to 96.4% of the accrued basic pension. The bridging supplement for early retirees (equivalent to CPP and OAS payments which do not begin until age 65) were not paid.

Pilkington Glass Industries' employees in Scarborough had a flat benefit plan. Upon wind-up, employees who had met early retirement requirements were granted the benefits set out in the plan. Employees who qualified under the 45 and 10 rule were granted a vested deferred pension as set out in the plan. Other employees received either a deferred vested pension or a cash settlement of it.

Columbus McKinnon Ltd. hourly employees in St. Catharines had a flat benefit plan. At the time of the wind-up on August 18, 1979, the plan was not fully funded. Members not meeting the 45 and 10 requirement received no benefits. This affected 102 out of 200 employees. Existing pensioners received the same level of benefits without reduction.

Those eligible for early retirement by being aged 60 with 10 years service or whose age and service added up to 85 received benefits of $7 per month for each of the last 6 years, $6 per month for each of the previous 8 years and $6.10 per month for each of the previous year's service. A bridging supplement of $6.50 a month per year of service up to 30 years is payable to early retirees until age 65. These benefits were payable immediately but were reduced for members not at least age 62 with 10 years service. At wind-up the promised joint and survivorship option was not paid, so benefits other than the bridging supplement were increased 3% for those aged 62 with 10 years service and 1% for others. Employees meeting the 45 and 10 rule but ineligible for early retirement received a deferred life annuity with credits calculated as above.

Other Problems Arising From Plan Terminations

The termination of pension plans when plants close has the effect, even when the plan is fully funded, of reducing the pension benefits for which employees will eventually be eligible. The main problems arise due to vesting requirements, lack of portability provisions, locking-in of vested benefits and an end to inflation adjustments.

An employee is not vested, i.e., does not receive a non-forfeitable right to pension benefits arising from employer contributions, until certain requirements have been met. These vesting requirements usually involve having reached a certain number of years service and/or an age requirement. In Ontario and most other provinces, the legal requirement is vesting after ten years of service and age 45. This 45 and 10 rule is the maximum requirement; pension plans may have more liberal vesting requirements such as 10 years service regardless of age or where the percent of benefits vested increases by 10 each year until full vesting occurs after 10 years.

When a plan is terminated and it is fully funded, the employee will receive back his/her contributions but will not have any claim to the employer's contribution. Thus, the employee will not receive any deferred pension benefits at retirement age arising from these years of service.

When an employee leaves one job and takes another the accumulated pension credit does not follow him/her to the next job except where there is a reciprocal agreement among employers to recognize these credits. At present such an agreement exists among most government and quasi-government bodies in Canada. Federal and provincial civil servants, most teachers, some municipal employees, some hospital and university employees and some crown corporation employees are covered under this agreement. Life insurance companies have recently formed a reciprocal agreement recognizing the credits of employees moving among them.

Without portability provisions it is more difficult for an employee who had several jobs to be vested. Even if the employee is vested fewer pension credits will be earned if the plans have final average formulas for determining benefits. This is less of a concern for an employee who always belongs to flat benefit plans or career average plans.

In final average plans, as noted above, the formula is usually something like 2% of the average of the five highest earning years multiplied by the number of years of service. If the employee has belonged to several different plans then benefits will not be totally based on the earnings of the last few years, which are likely much higher than those of earlier years and total years of service. Instead benefits will be based on final years' salaries before leaving each plan and the number of years contributing to each plan. In periods of high inflation the difference can be quite large.

In Ontario by law any pension contributions that are legally vested, i.e., the employee satisfies the 45 and 10 rule, are locked in. They must be used to purchase a deferred annuity to be paid upon the employees retirement if the employe leaves the plan or if the plan folds. Up to 25% of the contributions may be given immediately to the employee in cash. The deferred annuity is purchased from an insurance company and the interest rate used to calculate the growth in value of the benefits may be significantly less than the market rate. The employee receives less of a benefit than could have been earned by investing the contributions elsewhere.

Pensioners receiving benefits from private plans do not have set indexing provisions to cope with inflation. Some companies do, however, grant ad hoc increases to former employees receiving pensions. In other cases the union will negotiate benefit increases for former employees. Where the plant has closed and the plan has folded the pensioner will not be able to rely on these adjustments.

Submissions to the Royal Commission on Pensions

The Committee wishes to note, without necessarily endorsing, some of the recommendations contained in submissions from the public and from interest groups to the Royal Commission on Pensions which address problems which arise with pension benefits in the event of a plant shutdown. Some of a general nature also address these problems. Among the recommendations are:

greater role for government plans

- government should institute one contributory plan for all workers, with indexed benefits equal to 75% of pre-retirement income and sizeable survivor's benefits
- all private plans should be wound down or frozen, everyone over 18 should contribute the difference between 5% of their income and the amount of CPP contributions with employers required to match contributions, financial institutions could compete with different plans

guarantees

- there should be pension reassurance to prevent workers already receiving a pension from losing the benefits in the event of plant closings

vesting

- vesting should be gradual, increasing by 10% of contributions each year until all contributions are vested after 10 years

- 25% vesting after 5 years, full vesting under the 45 and 10 rule
- all pension benefits should be fully vested, locked-in and portable

locked-in provisions

- remove locked-in provisions where an annuity can be purchased at a better rate, locked-in plans may only increase at 3% a year
- trust companies should be allowed to sell life annuities
- existing plans should allow terminating employees to take benefits into RRSPs or locked-in deferred annuities

early retirement

- workers choosing early retirement upon layoff should have pensions calculated as if they had remained at their job until normal retirement age

information

- employees and unions should have access to full texts of all pension plans and individual employee's pension benefit statement, an employee should receive upon request the trust agreement, annual financial report, trustee's report including investment mix and most recent actuarial report.

CHAPTER III: AREAS OF CONCERN

Employee Adjustment

Termination Notice Provisions

- is the length of notice period adequate
- should employers be required to give notice where an employee is put on a temporary layoff of up to 13 weeks
- should mass notice provisions be given in the case of layoffs of less than 50 employees

Severance Pay

- no legislated requirement in Ontario, covered in some union contracts; should it be considered as compensation for job loss or as a support payment
- if legislated, should there be a requirement that firms set aside funds or should severance pay claims be put ahead of those of secured creditors in determing the distribution of assets upon bankruptcy
- how high would the cost be to firms, particularly small firms, and would legislated severance pay tend to discourage future investment, and to what extent do present programs such as employment insurance and termination notice provisions serve the role which severance pay is expected to play
- should severance pay be considered separately from or in addition to pay in lieu of notice

Pensions

- an unfunded liability or an actuarial shortfall at the time of a plant closing may result in the loss of contributions of unvested members of the plan and some loss of benefits for vested members, this is particularly a problem for flat benefit plans
- plant shutdowns and terminations of pension plans result in the long term reduction of pension benefits to many employees because of vesting requirements, lack of portability provisions, lock-in requirements and a loss of any inflation indexation for those already receiving benefits

Placement Aid for Laid-off Workers

- manpower adjustment committees, how successful are they, do they receive adequate funding, should they be required in all cases
- retraining and educating laid-off workers, to what extent should skills training courses like those set up by Steep Rock be encouraged
- what role should the Ministry of Colleges and Universities have in providing skills training courses for laid off workers
- who should be responsible for relocation expenses of laid-off workers

Social Impact of Plant Shutdowns

- psychological effects on laid-off workers
- effects on families of laid-off workers
- effects on local communities, which may be dependent on one industry

Plant Shutdowns

Foreign Ownership

- decisions with respect to shutdowns are made in many cases outside the country
- operations rationalized in favour of increased production in the parent company's country to meet the demands of the Canadian market
- the parent firm can decide to reduce Canadian manufacturing operations to assembly, distribution and/or marketing operations and still compete in the Canadian market
- some foreign-owned branch plants do not try to compete in export markets denying themselves access to the large markets they need to be viable
- the possibility that decisions are made in advance to transfer profitable product lines and research and development outside Canada, thereby reducing the economic viability of the operation in this country

Recession

- low product demand in Canada and Ontario's major export market, the United States
- reduction in sales of economic staples, automobiles and houses, while partly due to structural changes is partly cyclical in nature. The multiplier effects of large drops in demand for these products is huge

High Costs

- high interest rates, inflation, increased labour costs, increased energy costs
- high profit targets by corporations
- low Canadian dollar, while making Canadian goods more competitive in domestic and foreign markets, makes the cost of importing components and machinery used in production higher

Structural Changes in the Economy

- many plants no longer produce viable products, for instance the shift to smaller, lighter cars containing more plastic and aluminium has put many auto parts manufacturers out of work
- shift to microelectronics and silicon chip technology has similarly left many manufacturers unable to compete
- shift to less energy intensive technologies and equipment has changed viability of some manufacturers

Import Competition

- manufacturers operating in Canada compete in a small market wide open to foreign competition because there are few tariff or non-tariff barriers to imports
- at the same time many foreign markets effectively exclude Canadian manufacturers with tariff and non-tariff barriers
- manufacturers operating in Canada in many instances do not have access to a large enough market to make them economically competitive

Jurisdiction Shopping

- many American states have a wide range of tax and grant incentives from federal, state and municipal governments encouraging industry to locate there
- Sunbelt states with right-to-work legislation, less stringent regulations on business and low levels of unionization have low wage rates which may be attractive to industry

- Ministry of Industry and Tourism remains confident that Ontario can compete effectively for new investment without getting involved in bidding wars

Information on the Extent of the Problem

- statistics on layoffs compiled by the Ministry of Labour are not all inclusive; only permanent or indefinite layoffs of 25 or more employees are compiled
- only in the case of layoffs of 50 or more people is there a legal requirement to report to the Ministry
- temporary layoffs of 13 weeks or less and layoffs of 25 or fewer employees are not recorded
- financial information on wholly owned subsidiaries of foreign owned corporations is not publicly available, making if difficult to determine whether the closing is justified
- need for 'tracking' of laid-off workers
- need for detailed profile of laid-off workers
- little information regarding the incidence of using permanent notice in cases in which a temporary layoff is first indicated, and then becomes permanent

CHAPTER IV: PRELIMINARY OBSERVATIONS

It is clear from the cases studied by the Committee that the decision to close has been a company monopoly. The decision is not only a head office decision but in branch plants one which is made with little input from Canadian management.

It is equally clear in these cases that the unions representing the workers had no influence in terms of the closure decision. The union's role was reduced to that of trying to negotiate the best possible settlement after the fact.

These conclusions clearly indicate questions which must now be addressed by the Committee. Should government take a role in the decision making process prior to plant closures and should protection be offered workers and the communities affected if a closure must proceed?

CHAPTER V: THE WAY AHEAD

The Select Committee's approach up to the Christmas recess of the House had been to examine specific plant closings in Ontario. Employer and employee representatives and in some cases officials from the affected communities have appeared before the Committee. This has given the Committee a feeling for the effect that a plant shutdown has on the workers and the local community. At the same time an insight has been gained into the ways in which plant shutdown decisions are made and the economic circumstances leading to them.

The recessionary or low growth economic conditions of recent years have led to a large overcapacity for many companies. Rationalization decisions have often led to the closing down of Canadian plants because other larger plants outside Canada could serve the Canadian market by increasing production. There is little or no economic disincentive to doing this.

The broader issues to be examined in more detail in the coming months are:

How should the costs of a plant shutdown be distributed? What share of the costs should be borne by the employer; the employee; the local community; the senior levels of government? How could other government programs or negotiated benefits, already in place, such as unemployment insurance or supplementary unemployment benefits help to allay these costs?

To what extent will the imposition of stricter closing requirements affect Ontario's ability to attract new investment? How will the costs to Ontario in terms of costs to business and foregone investment compare to the benefits?

Most of the decision making involved in the plant shutdowns studied was done outside of Canada. Is there a role for government in requiring justification for these decisions based on how they will affect individuals and communities in this province? Should governments buy and operate operations which may no longer be economically viable from the owner's point of view but which may be seen to be viable to the province as a whole?

Should preferential access to the Ontario market be given to companies that manufacture products in Canada? How could this be accomplished? How would the costs of this compare with the benefits? How would it compare to the benefits of freer trade?

In January 1981 the Committee will hold four more weeks of hearings followed by the preparation of a final report in February. During these hearings the Committee will hear from the larger umbrella organizations representing labour and management and from private, academic and government organizations.

The Committee will attempt to take what it has learned from the case studies and what it hopes to learn from more broadly based groups to reach an understanding of and make recommendations on the issues outlined above.